

The Orissa Gazette

The image shows the State Emblem of India at the top, featuring the Lion Capital of Ashoka. Below it is a circular banner with the Sanskrit motto "Satyameva Jayate" in Devanagari script. The entire emblem is set against a light blue background.

EXTRAORDINARY PUBLISHED BY AUTHORITY

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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 21st February 2011

No. 1929—li/1(B)-2/2006-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd December 2010 in Industrial Dispute Case No. 32 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of State Resource Centre for Adult Education, Orissa, Bhubaneswar and its workman Shri Sikhar Ch. Swain was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

**IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 32 OF 2006**

Dated the 23rd Decemebr 2010

Present :

**Shri S. K. Dash,
Presiding Officer,
Labour Court, Bhubaneswar.**

Between :

The Management of State Resource Centre for Adult Education, Orissa. Bhubaneswar.

First Party—Management

And

Their Workman Shri Sikhar Ch. Swain

Second Party—Workman

Appearances :

Shri U S Rath

For the First Party—Management

Shri S. C. Swain

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court vide Order No. 3446—li/1(B)-2/2006-LE., dated the 2nd May 2006 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Sikhar Chandra Swain, the workman by the Director, State Resource Centre for Audit Education, Orissa, Bhubaneswar with effect from 1st July 1993 is legal and/or justified ? If not, to what relief the workman Shri Swain is entitled ?”

3. The case of the workman in brief is that he joined in the management on Dt. 1-4-1988 as a casual worker on daily wage basis and while continuing as such he was appointed as Peon vide Office Order No. 46, Dt. 4-1-1992 and worked till 30-6-1993. He was getting his salary at the rate of Rs. 1200 per month alongwith other facilities like medical allowance and house rent. During his service period for more than 18 years under the management he discharged his duties efficiently and sincerely to the satisfaction of the management. But the management terminated his service with effect from 1st July 1993 without observing the necessary formalities of the Industrial Disputes Act. The action of the management in this regard is quite whimsical, arbitrary and beyond the principle of natural justice. After his termination other new persons namely Akrura Bhuyan, Satya Narayan Prusty, Asish Ranjan Mohapatra, Aparti Behera, Gopinath Behera and Smt. Sanghamitra Swain in the cadre of Class IV staff were engaged and continuing now except Shri Aparti Behera and Shri Gopinath Behera who left the service to join other Government Organisation. So in this background the workman has raised an industrial dispute before the Labour Authority and when the conciliation failed, the matter was referred to the Government and the reference has been received from the Government and this Industrial Dispute Case has been initiated wherein the workman has prayed for his reinstatement in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to the management, the management is not an industry as per the provisions of the Industrial Disputes Act. It is a Voluntary Organisation. Many voluntary workers work to fulfil the philanthropic passion and mission without intending any material gain rather for the sake of social service. It is a non-profit making institution working on Adult Education only to fulfil its charitable means. The establishment is oriented on a human mission fulfilled by volunteers who work with the management not because they are paid wages, but they share the passion for the cause and derive job satisfaction from their contribution. The persons who work, do not work as employees or workmen rather they are social workers who work voluntarily to further the noble mission of the management. In this effect the workman joined as a social worker on Dt. 4-1-1992 who had voluntarily joined the organisation only to fulfil the philanthropic objectives and personal satisfaction. The workman was paid a consolidated honorarium of Rs. 600. The workman used to remain absent for unspecified periods of time without any information at all. In the whole period the workman has contributed his voluntary service to the management. The workman has never worked

for a continuous period of more than 50 days at a stretch. As his irregularity interfered with the smooth working of the management, finding no alternative the workman was notified that his valuable services were no longer required but the workman maliciously misinterpreting the same as termination letter has filed his statement of claim in this case. The workman had never paid any salary or allowance as he was not an employee but was being paid consolidated honorarium only in exchange of his voluntary service. So in this background the workman is not entitled to get any relief in this case and the management has prayed for answering the reference accordingly in negative.

5. In view of the above pleadings of the parties the following issues have been settled :—

ISSUES

- (i) "Whether the termination of services of Shri Sikhar Chandra Swain, the workman by the Director, State Resource Centre for Adult Education, Orissa, Bhubaneswar from Dt.1-7-1993 is legal and/or justified ?
- (ii) If not, what relief the workman Shri Swain is entitled to ?"

6. In order to substantiate his plea, the workman has examined himself as W.W.1 and proved documents marked as Exts. 1 to 4. Similarly the management has examined his Administrative-cum-Finance Officer as M.W. 1 and proved document marked as Ext. A.

FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for discussion for convenience.

Initially it has been argued by the management that as the management is not an industry as per the provisions of the Industrial Disputes Act and there is no relation of employee and employer between the workman and the management, the provisions of the Industrial Disputes Act is not applicable and this Industrial Dispute is not maintainable. The "Industry" has been defined in Section 2(j) of the Industrial Disputes Act which reads as follows :

"Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

M.W.1 in his affidavit evidence has stated that the voluntary workers work to fulfil the philanthropic passion and mission without intending any material gain rather for the sake of social service. It is a non-profit making institution working on Adult Education only to fulfil its charitable means. The establishment is oriented on a human mission fulfilled by volunteers who work with the management not because they are paid wages but because they share the passion for the cause and derive job satisfaction from their contribution. But it is admitted that the workman was getting consolidated honorarium of Rs. 600 towards his voluntary contribution. It is also admitted that the workman joined as Social worker on Dt.1-2-1992. W.W.1 deposes that he joined as Peon vide Office Order No. 46, Dt. 4-1-1992 of the Administrative Officer of the management. Ext.2 is the Xerox copy of such office order. So on careful consideration of all the materials available in the case record as discussed above, I am inclined to hold that the establishment of the management is an industry as per the Industrial Disputes Act and there was employer and employee relationship between them.

8. W.W.1 deposes that he was getting wages at the rate of Rs. 1200 per month at the time of termination of his service. But he was getting monthly consolidated wage at the rate of Rs. 600 vide Office Order No. 46, Dt. 4-1-1992. He was receiving his wages by signing in the register kept and maintained by the management from time to time. On Dt. 1-7-1993 the management refused his employment and not allowed to resume his duty. The workman approached the authority of the management but it was in vain. So the termination of service by way of refusal of employment to the workman without fulfilling the mandatory provisions of the Industrial Disputes Act is bad in the eye of law and against the principle of natural justice. It has been argued by the management that the workman has not worked for a continuous period of more than 50 days at a stretch and having no alternative he was informed that his service was no more required. But it was not a termination letter. From the materials available it shows that the provisions of the Industrial Disputes Act has not been followed at all while the service of the workman was terminated by way of refusal of employment. Regarding continuous service and working for 240 days in 12 calendar months preceding to the date of termination, there is no materials on record to show that the workman has worked less than 240 days in the relevant period. According to the settled principle of law as reported in AIR 2010 SC 1236 it has been held that the workman would have difficulty in having access to all official documents, muster rolls etc. in connection with his service. When the workman claimed and deposed that he worked for 240 days, burden of proof shifts to employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. But in the instant case, the management has not proved a single document on his behalf in this case. Perused the documents marked as exhibits on behalf of both the parties. Ext. 4 is the Xerox copy of the Service Book. It shows that he was appointed as Peon on a consolidated salary of Rs. 600 with effect from the 1st January 1992. The workman has been cross-examined by the management, but nothing has been elicited from his mouth to disbelieve the sworn testimony of W.W.1. In the cross-examination the management has put a suggestion that the workman was appointed for a specific project and after completion of such project his service was not required which was answered in negative and it is also contrary to the pleading. The appointment order Ext. 2 also does not disclose anything in this regard. Further it has been argued by the management that the workman raised the present dispute after about 11 years of cause of action without any reasonable because for which his plea should not be taken into consideration. But according to the settled principle of law there is no specific limitation for raising an industrial dispute. But sufficient cause should be shown. However merely because he remained silent for raising the present dispute after such delay of about 11 years his case should not be thrown-out on this ground alone. So now on careful consideration of all the materials available in the case record as discussed above, I am inclined to hold that the termination of service of the workman by the management from 1-7-1993 is neither legal nor justified. The workman is entitled to be reinstated in service.

9. Regarding back wages, according to the settled principle of law the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. Further according to the settled principle of law as reported in 2004 (Supp.) OLR 694 when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. But in the instant case taking into consideration of all the materials available in the case record, instead of

granting back wages a lump sum amount of Rs.15,000 as compensation in lieu of back wages will meet the ends of justice in my opinion. Both the issues are answered accordingly.

10. Hence Ordered :

That the termination of services of Shri Sikhar Chandra Swain, the workman by the Director, State Resource Centre for Adult Education, Orissa, Bhubaneswar from Dt. 1-7-1993 is illegal and unjustified. The workman Shri Swain is entitled to be reinstated in service with a lump sum amount of Rs. 15,000 (Rupees Fifteen thousand) only as compensation in lieu of back wages. The management is directed to implement that Award within a period of one month from the date of its publication in the official Gazette failing which the amount shall carry interest at the rate of 9% (nine per cent) per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
23-12-2010
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
23-12-2010
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor

P. K. PANDA
Under-Secretary to Government